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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,418	01/23/2001	Burton Simon	8054.01	2463

7590 06/15/2005

Shawn D. Sentilles  
WYATT, TARRANT & COMBS, LLP  
1715 AARON BRENNER DRIVE  
SUITE 800  
MEMPHIS, TN 38120-4367

EXAMINER
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BROCKETTI, JULIE K

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/767,418	<b>Applicant(s)</b> SIMON ET AL.	
	<b>Examiner</b> Julie K. Brockett	<b>Art Unit</b> 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-41, 43-64 and 66-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13-37, 43-60 and 66-75 is/are rejected.
- 7) ☒ Claim(s) 8-11, 38-41 and 61-64 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because the reference numbers have been handwritten and are difficult to read and scan. Please insert typed reference numbers into the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 11, 41, 52 and 64 are objected to because of the following informalities:

1. Claims 11, 41 and 64 use an equation in which division is being performed. The division sign is appropriate to indicate this so the line under the first part of the equation is improper since the concept of division has already been indicated by “÷”. Please remove the underlining of the top half of the equation.

2. In claim 52, the word “alive” should be “a live”, i.e. two words, not one.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11,13-41,43-64 and 66-75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 22 recite the limitation “said step of conducting” and “said step of administering”. There is insufficient antecedent basis for these limitations in the claims. The previous recitation does not recite the word “step” please be consistent.

Claims 1, 22 and 52 all recite the limitation "...that retains the flavor of a pari-mutuel style". What is a "flavor" of a pari-mutuel style? One of ordinary skill in the art would not know the limits as to when something may have the "flavor" of pari-mutuel style and when it does not. Consequently, the claims are indefinite.

Claim 19 recites the limitation "said bonuses". There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejection

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under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 3-7, 13, 18, 20-22, 24, 29-31, 34-37, 43, 48, 50-54, 57-60, 66, 71, 73 and 74 are rejected under 35 U.S.C. 102(e) as being anticipated by Brenner et al., U.S. Patent No. 6,554,709 B1.** Brenner discloses a method of playing a pari-mutuel betting game between a plurality of players. The pari-mutuel betting game is based on events unfolding during a live

sporting event. A principal objective of the game being to acquire the largest number of betting tokens by the end of the sporting event. The players are in direct competition because payoffs are pari-mutuel style. Betting tokens are allocated to each of the players prior to the commencement of the sporting event, i.e. the players have money and can create accounts. A plurality of betting events are conducted, each betting event based on a bettable event occurring during the sporting event. The step of conducting a betting event comprises, selecting a betting event from the bettable events, administering at least one betting line for the betting event, each said step of administering a betting line comprising, opening a betting line for the betting event. The betting line based on a finite set of possible outcomes of the betting event. The players are allowed an amount of time within which to selectively bet tokens on the possible outcomes of the betting event. Tokens that are bet on the open line are frozen such that the frozen tokens are not available for further betting until a payoff has been made on the betting event. The betting line is closed after a selected interval such that no further tokens may be bet on the line. The sporting event is monitored until a termination event occurs with regard to the betting event. The betting event is terminated upon occurrence of the termination event for the betting event. Upon termination of the betting event, winners of each betting line the betting event are paid off in pari-mutuel style. The process of selectively conducting betting events is repeated until the sporting event has concluded. Payoffs for hierarchical choice sets are

determined that retain the flavor of a pari-mutuel style (See Brenner Fig. 10; cols. 2-5) [claims 1, 22, 52]. For example, a daily double wager or a player merely betting on multiple wagers can be considered a hierarchical choice set. For each betting event, only one betting line is open at any given time, to thereby encourage the players to bet on a given betting line before said betting line closes (See Brenner Fig. 10) [claims 3, 33, 56]. A new betting line is opened substantially whenever a prior betting line closes, to thereby constantly challenge the players to evaluate an open betting line within the betting event (See Brenner Fig. 10) [claims 4, 34, 57]. For example, when the betting line for race 2 has finished, the betting line for race 3 is opened. Each of the players can place multiple bets on any open betting line (See Brenner Fig. 16) [claims 5, 35, 58]. Additional tokens are allocated to each of the players at selected intervals during the game (See Brenner col. 7 lines 39-58) [claims 6, 36, 59]. Each of the players receive an equal amount of the additional tokens (See Brenner col. 7 lines 39-58) [claims 7, 37, 60]. For example, if all the players bet the same wagers and the wager is a winner, then all players will have their account credited with the same amount once the winners are determined. The sporting event is selected from the group consisting of football, baseball, tennis, soccer, basketball, hockey and horse racing (See Brenner col. 2 lines 47-54) [claims 13, 43, 66]. The selected sporting event is a race. The betting events are win, place and show and the betting choices for each betting event are the participants entered in the race. A conventional betting line is opened

in the win, place, and show betting events prior to a start of the race and the betting line is closed when the race begins. A series of unconventional betting lines in the win, place and show betting events are opened one at a time during the race such that only one betting line is open at any given time during the race and the conventional and unconventional lines are terminated at the end of the race (See Brenner cols. 11 & 12) [claims 18, 48, 71]. The players pay money to a gambling establishment in exchange for allocation of tokens (See Brenner col. 7 lines 39-58) [claims 20, 50, 73]. It is inherent that the gambling establishment retains a percentage of tokens bet on the betting lines so as to be able to conduct the event [claims 21, 51, 74]. The betting is computerized and a host processor provided and programmed for analyzing and processing input data and outputting data relevant to the pari-mutuel betting game. A plurality of player processors are interactively connected to the host processors. The player processors are programmed for playing the pari-mutuel betting game. Each of the player processors has a display means operatively associated therewith for displaying data received from the host processor and for entering data and sending information to the host processor. An administrative processor is interactively connected to the player processors via the host processor. The administrative processor is programmed for administering the pari-mutuel betting game, the administrative processor has a display means operative associated therewith for displaying data received from the host processor and for entering data and sending data to the host

processor. An administrator browser page is displayed on the display means of the administrative processor. A player browser page is displayed on each of the player processors (See Brenner Figs. 1 & 2) [claims 22, 52]. It is noted that the entire process of Brenner is conducted through the use of various processors. The displayed betting event information for each of betting line is selected from the group consisting of betting line identification, bonus amount, betting choices in the line, total tokens bet on each betting choice in the line, number of tokens the player using the player processor has bet on each betting choice in the line, payoff odds, and status of betting line (See Brenner Figs. 8-16) [claim 24]. The host processor simultaneously runs a plurality of pari-mutuel betting games, each of the pari-mutuel betting games is based on a separate sporting event. Each of the pari-mutuel betting games assigns identification numbers to the administrator for and the players of the game. The processor uses the identification numbers to ensure that the players are linked to the appropriate administrator of that particular game (See Brenner Figs. 6-10) [claim 29]. The host processor, the player processor and the administrative processor interact via the Internet (See Brenner Figs. 1 & 2) [claim 30]. At least some of the player processors are connected to the host processor via a wireless Internet connection means (See Brenner Figs. 1 & 2) [claims 31]. The host processor includes an interrupt processing means for processing interrupts received from the processors. The interrupts are selected from the group consisting of update, bet, open, close and terminate (See Brenner col.

11-53) [claim 53]. The host processor has a web server means for downloading interface screens to the player processors and the administrative processor. The host processor has a bookkeeping means for processing all bookkeeping functions required by the host processor. The host processor has a pari-mutuel betting game database means for holding login information for each of the players. The host processor has a real-time processing loop means for supplying socket-based real time communications between the player processors, administrative processor and bookkeeping means (See Brenner Figs. 1-3) [claim 54].

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 25-28 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner et al., U.S. Patent No. 6,554,708 B1.** Brenner lacks in disclosing a new line function. It would have been obvious to one of ordinary skill in the art to combine the open and close line functions into a new line function such that selecting the new line function closes the open line and opens a new line [claim 25]. It is up to the event administrator's discretion of

when to open or close a line. Consequently, having a new line function is obvious when a line is closed it is obvious to open a new line so as to receive more bets. Brenner also lacks in disclosing that players may elect to play the betting game in a private group. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a subset of players elect to play the pari-mutuel betting game in a private group consisting of only a subset of players wherein the private group is being administered by an administrator [claim 26]. It is well known throughout the art that one could not allow certain people to play a game or could break off and form private betting groups so that players can more thoroughly enjoy the game. It is also well known that private groups selectively customize a set of house rules for private groups prior to commencement of the sporting event [claim 27]. By a private group setting their own rules, the game is more enjoyable to the players. It would also have been obvious to have the customized house rules for the private group be selected via a captain's browser page on one of the remote terminals wherein the captain's browser page containing input fields for setting up a private game for the private group. The input fields of the captain screen include a list of the players of the private group, a list of betting events and a default bonus size for betting lines, and an allocation of tokens to be distributed to the players at selected points in the sporting event [claim 28]. It is well known throughout the art to have player's set up their own games and run them privately. By doing so, players can establish and customize their

own rules and run the game as they want to thereby enjoy the game more.

Brenner also lacks in specifically disclosing opening some of the lines at random points in time. It would have been obvious to one of ordinary skill in the art at the time the invention was made to randomly open some lines at random points in time so as to add uncertainty as to when a line will close and thereby provide an incentive to place bets early in a given betting line [claim 75]. By randomly opening lines, players will not know when chances for bets will occur and therefore, they will not have a detailed strategy for placing bets and will be more likely to place more bets in the beginning of the game.

**Claims 2, 23, 32 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner et al., U.S. Patent No. 6,554,708 B1 in view of Hughs-Baird et al., U.S. Patent No. 6,468,156 B1.** Brenner lacks in disclosing allocating bonus tokens. Hughs-Baird teaches of a gaming system in which players are encouraged to bet by allocating bonus tokens to an open betting line (See Hughs Baird col. 3 lines 5-40) [claims 2, 32]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide players with bonuses if they bet. Players always enjoy bonuses and if they might receive one by placing a bet, player would be more inclined to place the bet.

**Claims 14-17, 44-47 and 67-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner in view of Mino, U.S. Patent No. 6,394,895 B1.** Brenner discloses racing but lacks in disclosing football,

baseball, tennis and basketball. Mino discloses a game apparatus and method for predicting the outcomes of sporting events including baseball, football, soccer and betting events consist of outcome of drive, next score, number of touchdowns in current quarter, winner of game, batter's turn at bat, inning, winner, next score, winning pitcher, losing pitcher, winning margin, and number of home runs (See Mino col. 3 lines 1-35) [claims 14, 15, 44, 45, 67, 68]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to allow players in the invention of Brenner to bet on other sporting events including football, baseball, tennis and basketball. Furthermore if basketball or tennis were bet on it is obvious to bet on events consisting of winner of game, winner of set, winner of match, next score, lead change, quarter scoring, high scorer, high rebounder, next foul, point spread, and over-under [claims 16, 17, 46, 47, 69, 70]. It is well known throughout the art to bet on various events within a sporting event as seen in Mino, by applying these types of events to the system of Brenner, players could easily place wagers on all of these events and thereby win money and more thoroughly enjoy the game.

**Claims 19, 49 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner et al., in view of Jorasch et al., U.S. Patent No. 6,379,248 B1.** Brenner lacks in disclosing bonuses. Jorasch teaches of a game in which players may receive a bonus and the bonus decreases in value as time progresses. Players who earn the bonus early therefore have an

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advantage over players who earn it later (See Jorasch col. 10 lines 32-38) [claims 19, 49, 72]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to decrease a bonus in the invention of Brenner as time passes. By decreasing a bonus, players would want to earn the bonus at its highest value and if that meant betting early, players would do that.

### ***Allowable Subject Matter***

Claims 8-11, 38-41 and 61-64 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: While the prior art of record does disclose making wagers on events in various sporting events. The prior art of record lacks in disclosing a hierarchical pari-mutuel payoff tree with a structure in which the betting event has two primary outcomes and the primary outcomes have two secondary outcomes, such that whenever one of the secondary outcomes is a winning bet, one of the primary outcomes is also a winning bet and that the winning bets placed on the secondary outcomes receive a higher pari-mutuel style payoff than winning bets placed on the primary outcomes.

### ***Response to Amendment***

It has been noted that claims 1, 22 and 52 have been amended. Claims 12, 42 and 65 have been cancelled.

### ***Response to Arguments***

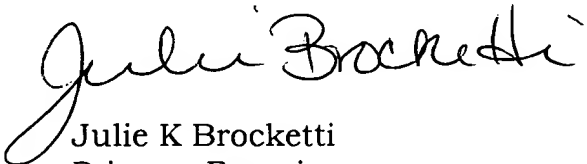
Upon further consideration of the claims, a new ground(s) of rejection is made in view of Brenner et al., U.S. Patent No. 6,554,709 B1. The Examiner notes that the limitation "hierarchical choice sets" is a vague term and is open to broad interpretation.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K. Brockett whose telephone number is 571-272-4432. The examiner can normally be reached on M-Th 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Julie K Brockett  
Primary Examiner  
Art Unit 3713